

MINUTES

Executive Board



Senator Brock L. Greenfield, Chair
Representative G. Mark Mickelson, Vice Chair
Representative Spencer Hawley, Ranking Minority Member

**Fifth Meeting, 2018 Interim
Monday, August 27, 2018**

**Room 413 – State Capitol
Pierre, South Dakota**

The fifth Executive Board meeting of the 2018 Interim was called to order by Senator Brock L. Greenfield at 10:00 a.m. in room 413 of the State Capitol. A quorum was determined with the following members answering roll call: Senators Jim Bolin, R. Blake Curd (via phone), Kris Langer, Jeffrey Partridge, Jim Stalzer, and Billie H. Sutton (via phone); Representatives Hugh Bartels, Spencer Gosch, Lee Qualm, Tim Reed, and Mike Stevens; Representative G. Mark Mickelson, Vice Chair; and Senator Brock L. Greenfield, Chair. Excused: Representatives Steven Haugaard and Spencer Hawley.

Staff members present included Jason Hancock, Director; Sue Cichos, Deputy Director; Doug Decker, Code Counsel; Tamara Darnall, Chief Fiscal & Program Analyst; David Ortbahn, Chief Research & Legal Analyst; Scott Darnall, Information Technology Manager; Alex Timperley, Research Analyst; Anita Thomas, Principal Legislative Attorney; Clare Charlson, Principal Research Analyst; Wenzel Cummings, Senior Legislative Attorney; Jason Simmons, Principal Fiscal & Program Analyst; Amanda Doherty-Karber, Senior Fiscal & Program Analyst; Lucas Martin, Fiscal & Program Analyst; Jeff Mehlhaff, Senior Fiscal & Program Analyst; Shane Mattheis, Senior Fiscal & Program Analyst; Hilary Carruthers, IT Support Specialist; and Cindy Tryon, Senior Legislative Secretary.

NOTE: For purpose of continuity, the following minutes are not necessarily in chronological order. Also, all referenced documents distributed at the meeting are attached to the original minutes on file in the Legislative Research Council office. This meeting was webcast live. The archived webcast is available at the LRC website at sdlegislature.gov.

Approval of Minutes

A motion was made by Senator Partridge, seconded by Representative Reed, to approve the minutes of the Monday, July 2, 2018, Executive Board meeting. Motion prevailed on a voice vote.

Investment Council Subcommittee Report

Representative Mickelson, Chair, Investment Council Subcommittee, said the Investment Council Subcommittee met with the Investment Council earlier today. The subcommittee recommends the Executive Board approve the Investment Council budget request as presented.

Mr. Lorin L. Brass, Chair, and Mr. Matt Clark, State Investment Officer, South Dakota Investment Council, presented the SD Investment Council's Investment Performance and FY20 Budget Request ([Document #1](#)). Mr. Brass presented the report showing the current and historical performance and comparisons of the investments. The FY2018 earnings were just under 8% which is .61% over the benchmark, bringing the portfolio to \$14.848 billion.

Mr. Brass said the Investment Council strives to hire and retain excellent people over the long-term which helps tremendously in a cost management system. One method used for this purpose is the incentive program which allows the staff to be rewarded when the money is available. This allows the Investment Council to stay close to the 70% of marketplace goal set for staff compensation. The staff are all paid from the assets under management and none of the compensation comes from the state's general fund.

Mr. Clark presented the Investment Council's FY20 budget request for Board consideration.

A motion was made by Representative Mickelson, seconded by Senator Bolin, to approve the FY20 South Dakota Investment Council budget as presented. Motion prevailed on a roll call vote with 12 voting AYE, 3 EXCUSED. Voting AYE: Bolin, Langer, Partridge, Stalzer, Sutton, Bartels, Gosch, Qualm, Reed, Stevens, Mickelson, and Greenfield. EXCUSED: Curd, Haugaard, and Hawley.

Mr. Clark then presented information on the Trust Funds. The Trust Fund accounts include Health Care Trust, Education Enhancement Trust, Dakota Cement Trust, and School & Public Lands. All trust funds continue to grow, and the performance of the trust funds can be found on pages 17-18 of Document #1.

Mr. Rob Wylie, Executive Director, South Dakota Retirement System, presented the South Dakota Retirement System (SDRS) Estimated Funded Status Summary ([Document #2](#)). The SDRS continues to be 100% funded. This plan is one of the best funded plans in the nation due in part to the flexible design allowing the plan to move with the market.

Management Reports

Ms. Sue Cichos, Deputy Director, said the Page Program documents are on the LRC website. Ms. Shirley Ellwein will be returning as the Page Advisor. In addition to sending the information to the schools and to legislators, there continues to be additional outreach to various youth groups and organizations. The 2019 Session launch is underway which includes recruiting session staff, such as committee secretaries and front desk personnel. Preparation is also underway for the September 12 Special Session. To better assist the legislators in getting to know the LRC staff, the staff listings on the LRC website are more detailed and include photos of the staff members. The LRC staff members are listed under various categories and the webpage with those listings can be found [here](#).

Mr. Doug Decker, Code Counsel, said West publishing, on contract to publish the South Dakota code, publishes a supplemental pamphlet to the Code in September and October which will include the results of the 2018 Special Session. Those results will also be available online with the West products and on the LRC website.

Mr. David Ortbahn, Chief Research Analyst, said the research staff are busy writing issue memos, some of which will be presented at this Executive Board meeting and others will be presented at the November Executive Board meeting. The LRC Intern program will now be under the leadership of Ms. Emily Kerr, Legislative Attorney. Mr. Wenzel Cummings, Senior Legislative Attorney, is leading the Bill Drafting Review Task Force. These projects are in addition to the two interim study committees that continue to meet. The two new research staff people are undergoing training to prepare them for the 2019 session.

Mr. Scott Darnall, Information Technology Manager, reported that, at the Technology Subcommittee meeting, the IT staff gave a demonstration of the new ACTS system which has been moved to the website to make it easier to use. The IT staff found the reasons the appropriations committee members were having issues with board papers last session and are addressing the problems with the vendor. All the new legislator devices have arrived; half are Window devices and half are Apple devices. The new devices are being prepared for distribution with final preparations to be completed after the election. The IT staff are also involved with the Bill Drafting Review Task Force.

Mr. Jason Hancock, Director, said LRC is busy preparing for the Special Session. Mr. Hancock met with Capitol Buildings and Grounds to discuss the rekeying of LRC offices and committee rooms, as this has not been done since the 1980's and there may be some security risks. Included in the discussion is the idea of using card readers so that legislators can have better access to the chambers and committee rooms with security cards.

Mr. Hancock introduced Ms. Tamara Darnall who replaced Ms. Annie Mehlhaff as the Chief Fiscal & Program Analyst.

Ms. Tamara Darnall, Chief Fiscal & Program Analyst, reported the fiscal staff have been busy training for and working on the program evaluations assigned by the Executive Board. The staff is also looking at the budget briefing documents and finding ways for the information to be easier to understand. And in conjunction with all LRC staff, the fiscal staff is preparing for the Special Session and for the upcoming 2019 Legislative Session.

Mr. Hancock distributed the document listing the *Staff Assignments by Topic* ([Document #3](#)). Mr. Hancock then introduced the new LRC staff members including Ms. Anita Thompson, Principal Legislative Attorney; Mr. Alex Timperley, whose title now is Research Analyst but upon passing the Bar Exam will be Legislative Attorney; Ms. Amanda Doherty-Karber, Senior Fiscal & Program Analyst; Mr. Shane Mattheis, Senior Fiscal & Program Analyst; and Ms. Rachael Person, Senior Legislative Secretary.

Mr. Hancock announced a change to the agenda regarding the Issue Memos. The *Comparison of Neighboring State Tax Systems Issue Memo* will be presented at the next Executive Board meeting.

Issue Memos

Mr. Wenzel Cummings, Senior Legislative Attorney, presented the *Wind Energy Development Issue Memorandum* ([Document #4](#)). This issue memorandum provides a brief summary of information that can be found in studies provided by various agencies, as well as the history of South Dakota's laws on wind energy development. The memorandum provides links to the other agencies' studies.

Ms. Clare Charlson, Principal Research Analyst, presented the *Federal Every Student Succeeds Act and How it Differs from No Child Left Behind Issue Memorandum* ([Document #5](#)). The Elementary and Secondary Education Act of 1995 (ESEA) created a role for the federal government in elementary and secondary education. ESEA has been reauthorized eight times, and those reauthorizations have brought change, but the goal of improving educational opportunities and outcomes for disadvantaged children has remained. This issue memorandum examines the most recent reauthorizations named No Child Left Behind which evolved into the Every Student Succeeds Act (ESSA).

A motion was made by Representative Mickelson, seconded by Representative Qualm, to approve and adopt the Wind Energy Development issue memo and the Federal Every Student Succeeds Act and How It Differs from NCLB issue memo. Motion prevailed on a roll call vote with 12 voting AYE, 3 EXCUSED. Voting AYE: Bolin, Curd, Langer, Stalzer, Sutton, Bartels, Gosch, Qualm, Reed, Stevens, Mickelson, and Greenfield. EXCUSED: Partridge, Haugaard, and Hawley.

Budget Subcommittee Report

Senator Jeffrey Partridge, Chair, Budget Subcommittee, said the Executive Board is responsible for setting the budget requests for the Department of Legislative Audit and the Legislative Research Council.

Mr. Marty Guindon, Auditor General, Department of Legislative Audit, presented two options for the Department of Legislative Audit FY20 budget proposal. Option A includes raising the starting salary for an Auditor 1 by 5% and correspondingly raising the pay grades in Legislative Audit's compensation system by 5%. This proposed increase is based on analysis and comparisons conducted by Mr. Guindon, at the suggestion of the Executive Board at the May meeting to address recruitment and retention issues. An increase in salary dollars of \$131,485 would be required to fund Option A. Option B does not provide for those types of raises.

With Option A, the overall increase in the FY20 budget request over the FY19 budget is \$169,842, bringing the total budget request for the Department of Legislative Audit for FY20 to \$3,927,756. With Option B, the overall

increase in the budget from FY19 to FY20 would be \$29,179, bringing the total budget request for FY20 to \$3,787,093.

Senator Partridge commented that the Joint Committee on Appropriations (JCA) has shown concern about the Legislative Audit staffing regarding hiring and retention. Senator Partridge said he feels strongly that the Auditor General would not ask for this funding if it was not needed.

Representative Bartels agreed with Senator Partridge, adding it is a statewide issue that auditors are difficult to find and hard to retain.

Representative Stevens said the cost of constant turnover is significantly higher than the requested additional salary policy dollars.

Mr. Guindon explained the Governor may not agree to this amount in the Governor's budget proposal, but the JCA can discuss the additional funding even if it is not in the Governor's budget request.

A motion was made by Representative Mickelson, seconded by Senator Partridge, to approve Option A for the FY20 Department of Legislative Audit budget request as presented. Motion prevailed on a roll call vote with 13 voting AYE, 2 EXCUSED. Voting AYE: Bolin, Curd, Langer, Partridge, Stalzer, Sutton, Bartels, Gosch, Qualm, Reed, Stevens, Mickelson, and Greenfield. EXCUSED: Haugaard, and Hawley.

Ms. Tamara Darnall, Chief Fiscal & Program Analyst, LRC, presented the budget request for the Legislative Research Council. The total increase in the FY20 LRC budget request over the FY19 budget is \$125,173 with the total request for FY20 being \$7,705,524. The majority of the budget increase is the projected 3% increase in Legislator salaries.

The session budget increase includes the addition of two computer interns. Director Hancock explained these interns would be stationed on the floor of the House and Senate and will be able to assist all legislators with any IT needs they may have. Representative Bartels said these two new computer internships could be an opportunity for technical schools to become involved in the internship program.

A motion was made by Senator Partridge, seconded by Senator Bolin, to approve the FY20 LRC budget as presented. Motion prevailed on a roll call vote with 13 voting AYE, 2 EXCUSED. Voting AYE: Bolin, Curd, Langer, Partridge, Stalzer, Sutton, Bartels, Gosch, Qualm, Reed, Stevens, Mickelson, and Greenfield. EXCUSED: Haugaard, and Hawley.

Legislative Intern Update and Selection Process

Ms. Emily Kerr, Legislative Attorney, and Mr. Lucas Martin, Fiscal & Program Analyst, introduced themselves as the new LRC intern coordinators and gave an update on the Legislative Intern program ([Document #6](#)). The Executive Board was asked if the practice of current leadership making intern selections prior to the election should continue. If the intern selection is delayed until after the election and after new leadership is elected, the intern candidates will most likely find other employment.

Senator Curd commented that the LRC staff does a thorough job with the interview process assuring the selection process goes smoothly. Representative Qualm said some good intern candidates have been lost in the past due to the selection process taking too long. Senator Sutton agreed that it is beneficial to select the interns as early as possible.

Senator Greenfield said it is a consensus of the Executive Board that the LRC intern program proceed as in the past with allowing current leadership to make intern selections prior to the election.

Access to Mental Health Services Interim Study Committee

Ms. Emily Kerr said the Access to Mental Health Services Interim Study Committee is planning to hold three additional meetings for a total of five. The amount budgeted for the committee will not be enough to fund the fifth meeting. The committee is asking the Executive Board to approve the additional funding needed to conduct the fifth meeting.

A motion was made by Senator Stalzer, seconded by Senator Bolin, to approve the request from the Access to Mental Health Study Committee to hold five meetings. Motion prevailed on a roll call vote with 13 voting AYE, 2 EXCUSED. Voting AYE: Bolin, Curd, Langer, Partridge, Stalzer, Sutton, Bartels, Gosch, Qualm, Reed, Stevens, Mickelson, and Greenfield. EXCUSED: Haugaard, and Hawley.

Program Evaluation Updates

Ms. Ariel Hammerquist, Fiscal & Program Analyst; Mr. Jeff Mehlhaff, Senior Fiscal & Program Analyst; and Shane Mattheis, Senior Fiscal & Program Analyst, are conducting the Drug Court Program Evaluation [\(Document #7\)](#). Ms. Hammerquist explained the documents to the board members. The project is behind schedule, but the report will be ready for the November Executive Board meeting.

Mr. Jason Simmons, Principal Fiscal & Program Analyst; Mr. Lucas Martin, Fiscal & Program Analyst; and Ms. Amanda Dougherty-Karber, Senior Fiscal & Program Analyst, are conducting the Dakota At Home Program Evaluation [\(Document #8\)](#). Mr. Simmons said there is still a lot of work to do on this evaluation, as it has taken quite some time to understand the program and get agencies to participate in the evaluation. The analysts do plan to have the evaluation report ready for the November Executive Board meeting.

LRC Bill Drafting Process Task Force

Mr. Wenzel Cummings, Senior Legislative Attorney, talked to the board about the LRC bill drafting task force that is working on evaluating the current bill drafting process and discussing changes to the process that could make the system more efficient [\(Document #9\)](#) [\(Document #10\)](#). In doing so, the task force has utilized Lean techniques, such as value stream mapping. Mr. Cummings said the current bill drafting process uses WordPerfect which is now creating some issues both with the staff and with the publisher of the code. While trying to find a way to address the WordPerfect issue, the LRC took this as an opportunity to review the entire bill drafting system.

Document #9 explains the goals the task force has set and lists some changes to the system that the board should consider. Document #10 diagrams the current bill drafting process from bill request to final dispensation. The task force will be finding ways to make the system more efficient and have the majority of the drafting process completed electronically. The timeline for making the changes to the drafting system is to have the new process in place for the 2020 Legislative Session.

A motion was made by Representative Reed, seconded by Senator Partridge, to approve moving forward with the changes to the bill drafting process as proposed, including all five items on Document #9 requiring universal legislator implementation. Motion prevailed on a roll call vote with 12 voting AYE, 3 EXCUSED. Voting AYE: Bolin, Curd, Langer, Partridge, Stalzer, Bartels, Gosch, Qualm, Reed, Stevens, Mickelson, and Greenfield. EXCUSED: Sutton, Haugaard, and Hawley.

Special Session Planning

Ms. Sue Cichos, Deputy Director, presented the preparation information for the September 12, 2018, Special Session. The Legislature will convene at 10 a.m. The session is being called to take up the issue of the collection and remittance of sales tax by remote sellers, and the timeframe by which state officers can be sworn into office.

New Legislator Orientation Planning

Representative Haugaard addressed the board via video presentation regarding suggestions for the new legislator orientation. Representative Haugaard suggested a variety of video presentations be produced to be available and viewable at the legislator's convenience. A portal could be established only for use by legislators allowing for easy access to the videos. The videos would provide information from all the agency heads and constitutional officers whereby they can explain the work of their offices.

Senator Greenfield said he had spoken with Ms. Tamara Darnall and BFM Commissioner Liza Clark about the possibility of designing a brochure listing the agency heads and other relevant officials. Ms. Darnall said she and Commissioner Clark have discussed the brochure and possibly including staff photos, so the legislators are better informed about the agencies' missions and personnel.

Mr. Hancock distributed copies of the 2017 New Legislator Orientation Agenda to illustrate how the orientation was conducted after the last election ([Document #11](#)).

Representative Reed suggested expanding the research and legislation section of the orientation, possibly including second term legislators to better explain the process. Representative Bartels said second term legislators could discuss the biggest challenges for incoming legislators, and how to address those challenges.

Senator Greenfield suggested Representatives Bartels, Reed, and Gosch as the panel of second term legislators to assist with the new legislator orientation.

Executive Session

A motion was made by Senator Partridge, seconded by Representative Bartels, that the Executive Board go into Executive Session to discuss items relating to personnel. The motion prevailed on a voice vote.

The Executive Board went into Executive Session at 2:45 p.m.

A motion was made by Representative Stevens, seconded by Representative Bartels, that the Executive Board come out of Executive Session. The motion prevailed on a voice vote.

The Executive Board came out of Executive Session at 3:25 p.m.

A motion was made by Senator Partridge, seconded by Representative Reed, that the Executive Board put together a subcommittee to explore the process by which the Executive Board can conduct exit interviews and create a forum to use internally to receive feedback as to why an employee has chosen to terminate employment with the LRC, and the subcommittee would be Senator Partridge, Representative Qualm, and Representative Bartels who will have a potential rough draft for review at the next Executive Board meeting. The motion failed on a roll call vote with 7 voting AYE, 3 voting NAY, and 5 EXCUSED. Voting AYE: Partridge, Stalzer, Bartels, Gosch, Qualm, Reed, and Greenfield. Voting NAY: Bolin, Stevens, and Mickelson. EXCUSED: Curd, Langer, Sutton, Haugaard, and Hawley.

Senator Greenfield said this motion can be reconsidered at a future meeting. The board does have a suggestion for a fair process by which an open conversation can be held with departing LRC staff without interfering with the current process.

Other Business

Senator Bolin asked the LRC to put together a list of all the Governor's appointees including those that are confirmed by the Senate and those that are not confirmed. This listing should include the reasons why some of the appointees do not need confirmation. Senator Greenfield requested the list include the timeframes for these appointments.

Adjourn

A motion was made by Representative Stevens, seconded by Senator Bolin, that the Executive Board be adjourned. The motion prevailed on a voice vote.

The Board adjourned at 3:30 p.m.